

STATE OF NORTH CAROLINA
COUNTIES OF WAKE AND NEW
HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

AMEC FOSTER WHEELER
ENVIRONMENTAL AND
INFRASTRUCTURE, INC. ALSO d/b/a
WOOD AND DANIEL SHIELDS

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Respondent,

AVX CORPORATION,
Respondent-Intervenor.

17 EHR 08520

DANIEL C SHIELDS

Petitioner,

v.

NC DEPARTMENT OF
ENVIRONMENTAL QUALITY, DIVISION
OF WASTE MANAGEMENT,
SUPERFUND SECTION

Respondent,

AVX CORPORATION,
Respondent-Intervenor.

17 EHR 08445

SETTLEMENT AGREEMENT

The North Carolina Department of Environmental Quality (“DEQ”), Division of Waste Management (“DWM” or “the Division”) through its Superfund Section, and Petitioner AMEC

Foster Wheeler Environmental and Infrastructure, Inc. also d/b/a Wood, (“Petitioner AMEC” or “AMEC”) enter into this Settlement Agreement to resolve matters in controversy between them fully and finally. DWM and Petitioner AMEC shall be referred to collectively herein as “the Parties.”

The Parties hereby stipulate that:

1. DWM has established the Registered Environmental Consultant (“REC”) Program pursuant to N.C.G.S. § 130A-310.9 and the Rules promulgated thereunder, 15A N.C.A.C. 13C .0300, *et seq.* (“REC Rules”). The REC Program provides a framework for private parties to undertake voluntary remedial actions at hazardous waste sites in order to expedite and encourage clean-up of these sites.
2. Pursuant to REC Rule .0301(3), “‘Registered Environmental Consultant’ or ‘REC’ means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to G.S. 130A-310.9(c).”
3. Pursuant to REC Rule .0301(4), “‘Registered Site Manager’ or ‘RSM’ means the key person or persons approved by the Division to manage all site activities and make certifications on behalf of the Registered Environmental Consultant in its role as consultant to responsible parties for implementation and oversight of a voluntary remedial action pursuant to G.S. 130A-310.9(c).”
4. On October 8, 2015, DWM entered into an REC Administrative Agreement with Corning Incorporated to perform voluntary remedial actions at a portion of the Corning Glass Works Site (“Corning Site”), 3900 Electronics Drive, Raleigh, Wake County, North Carolina. AMEC was the REC for this project.
5. To aid DWM in determining the Corning Site’s eligibility for entry into the REC Program, Petitioner Shields submitted a Site Cleanup Questionnaire Response

(“Questionnaire”) to DWM on November 14, 2013. Mr. Shields responded to Question 6 on the Questionnaire as follows:

6. Is site sediment or surface water known to be contaminated? ☐ Y ☒ N
If yes, or unknown, describe briefly on a separate page.

Additionally, Mr. Shields responded to Question 11 on the Questionnaire as follows:

11. Have hazardous substances known to have migrated off property at concentrations in excess of Branch unrestricted-use remediation goals? ☐ Y ☒ N
If yes, or unknown, please explain on a separate page.

6. Upon review of file documents submitted for the Corning Site as compared to the answers on the Questionnaire submitted by Shields, DWM has asserted that the answers to Question 6 and 11 on the Questionnaire submitted by Shields were incorrect. As a result, DWM has asserted that AMEC violated the following REC Rules:

- a. 15A NCAC 13C .0305(b)(4)(C), requiring acting with reasonable care and diligence and applying the knowledge and skill ordinarily required of RSMs in good standing,
 - b. 15A NCAC 13C .0302(c), prohibiting false statements, and
 - c. 15A NCAC 13C .0305(b)(8), requiring objectiveness and truthfulness in all reports and the inclusion of all relevant and pertinent information in reports when an omission would or reasonably could lead to a fallacious conclusion.
7. Based on the information in Paragraph 5, on November 9, 2017, DWM sent Petitioners the following:
- a. To Petitioner AMEC, DWM sent a “Compliance Order with Administrative Penalties for Violations of REC Program Rules, Corning Glass Works Site, Raleigh, Wake County, NC, NCD003195161” (“Administrative Penalty”). In the

Administrative Penalty, DWM fined AMEC six thousand five hundred dollars (\$6,500) for violations of the REC Program rules listed in Paragraph 6.

- b. To Petitioner Shields, DWM sent a “Disqualification Order for Violations of REC Program Rules, Corning Glass Works Site, Raleigh, Wake County, NC, NCD003195161” (“Disqualification Order”). In the Disqualification Order, DWM disqualified Shields as an RSM for violations of the REC Program rules listed in Paragraph 6.
8. Pursuant to N.C.G.S. § 130A-22(a), the Secretary of DEQ may impose an administrative penalty on a person who violates rules promulgated pursuant to Article 9 of North Carolina General Statutes Chapter 130A. The Secretary of DEQ has delegated the enforcement authority under N.C.G.S. § 130A-22(a) with respect to the enforcement of Article 9 of Chapter 130A, and the Rules promulgated thereunder, to the Director of the Division of Waste Management. The Director of the Division of Waste Management has, in turn, delegated the enforcement authority for Parts 3 and 4 of Article 9 of N.C.G.S. § 130A to the Superfund Section Chief.
9. Pursuant to REC Rule .0305(b), an REC failing to comply with the standards of professional responsibility set out in REC Rules .0305(b)(1) through (11) shall be subject to enforcement.
10. Pursuant to REC Rule .0305(b)(4)(C), “[t]he REC and its RSMs shall comply with the following standards of professional responsibility . . . (4) In providing professional services all RSMs shall: (C) act with reasonable care and diligence, and apply the knowledge and skill ordinarily required of RSMs in good standing in the State at the time the services are performed.”

11. Pursuant to REC Rule .0305(b)(1), “[a]n REC shall at all times recognize its primary obligation is to protect public health, safety and welfare and the environment in the performance of professional services as an REC.”
12. Pursuant to REC Rule .0305(b)(11), “[a]ll RECs shall have knowledge of [the REC Program Rules].”
13. The Parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.
14. AMEC has made or is making the following organizational changes regarding REC sites in North Carolina:
 - a. Petitioner Shields is no longer employed by AMEC;
 - b. AMEC has implemented a policy that, effective August 15, 2018, each RSM employed by AMEC must:
 - i. be familiar with, and certify that he or she has familiarized himself or herself with, the REC Rules and guidance documents. Furthermore each RSM should remain current on, bulletins, newsletters, and other updates regarding the REC program; and
 - ii. either attend a training session or update provided by DEQ to the REC regulated community or review documents or information from such a training session or update at least once annually if such programs are offered by DEQ.
 - c. AMEC has implemented a procedure pursuant to which all Site Cleanup Questionnaire Responses prepared by AMEC and submitted to DEQ on or after August 15, 2018, must be reviewed by the RSM responsible for the site and at least one other RSM employed by AMEC.

- d. AMEC reserves the right to revise these policies and procedures in the future. Any policy or procedural change shall be at least as protective as the policy or procedures stated in this Paragraph 14. Prior to revising the policies or procedures addressed in this Paragraph 14 during any time within the next five (5) years, AMEC shall provide written notice to DEQ ten (10) days prior to the effective date of any such revisions.
15. AMEC, which makes no admission of liability, violation, or wrongdoing, does not contest DWM's allegations that the answers to Questions 6 and 11 on the Questionnaire were not consistent with 15A NCAC 13C .0305(b)(4)(C), which requires acting with reasonable care and diligence and applying the knowledge and skill ordinarily required of RSMs in good standing.
16. DEQ withdraws and disclaims any allegations, findings, or conclusions in the Administrative Penalty and the Disqualification Order that AMEC's actions were not consistent with 15A NCAC 13C .0302(c), prohibiting false statements, and 15A NCAC 13C .0305(b)(8), requiring objectiveness and truthfulness in all reports and the inclusion of all relevant and pertinent information in reports when an omission would or reasonably could lead to a fallacious conclusion.
17. AMEC will not be disqualified from the REC Program with respect to the Site or generally, now or in the future, solely as a result of the Disqualification Order or the Administrative Penalty.
18. DEQ and AMEC hereby mutually agree to release the other Party from the alleged violations set forth in the Administrative Penalty. If new material information or facts come to light subsequent to the execution of this Settlement Agreement regarding the actions of Petitioner AMEC, this release is void. To the extent new material

information or facts come to light subsequent to the execution of the Settlement Agreement, DEQ shall contact AMEC at least two weeks prior to taking any new enforcement action concerning the alleged violations set forth in the Administrative Penalty.

19. DEQ reserves the right to:

- a. consider this Settlement Agreement in any manner allowed by statute or regulation, but only to the extent the Settlement Agreement concerns 15A NCAC 13C .0305(b)(4)(C).
- b. take enforcement action against AMEC for any future, new, or different violations of the REC Rules, 15A NCAC 13C .0300, *et seq.*, or any other applicable environmental laws.
- c. consider this Settlement Agreement (only to the extent the Settlement Agreement concerns 15A NCAC 13C .0305(b)(4)(C)) in order to weigh, assess or otherwise calculate future penalties for future alleged violations of the REC Rules against AMEC.
- d. consider this Settlement Agreement (only to the extent the Settlement Agreement includes concerns 15A NCAC 13C .0305(b)(4)(C)) to determine the future eligibility of AMEC to serve and perform work as an REC for the Corning Site for future alleged violations of the REC Rules against AMEC.

20. AMEC reserves the right to:

- a. file an action in the appropriate legal forum challenging DEQ's reliance on this Settlement Agreement in any future legal action by DEQ against AMEC.
- b. file a Petition for Contested Case Hearing to challenge any future penalties assessed by DEQ pursuant to N.C. Gen. Stat. § 150B-23.

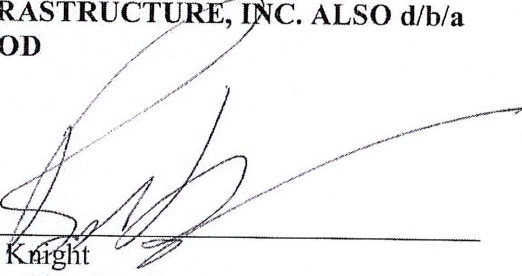
- c. file a Petition for Contested Case Hearing pursuant to N.C. Gen. Stat. § 150B-23 to challenge any determinations made or enforcement actions taken by DEQ, including: (i) enforcement actions for future violations of the REC Rules of other applicable environmental laws; (ii) penalty determinations for future alleged violations of the REC Rules, and (iii) eligibility determinations concerning AMEC's work as an REC for the Site for future alleged violations of the REC Rules by AMEC.
21. DEQ shall not consider the findings of alleged violations of 15A NCAC 13C .0302(c) and 15A NCAC 13C .0305(b)(8) in the Disqualification Order or the Administrative Penalty for any purpose as to AMEC, including for the purposes of making determinations regarding the future eligibility of AMEC to serve and perform work as an REC for other sites or making determinations regarding any future alleged violations of the REC Rules against AMEC.
22. Petitioner AMEC shall pay DWM six thousand and five hundred dollars (\$6,500.00) ("Settlement Amount") in full settlement of the Administrative Penalty. The Settlement Amount shall be paid within thirty (30) days of execution of the Settlement Agreement.
23. The payment described in paragraph 22 shall be made by check and made payable to the "North Carolina Department of Environmental Quality" (or to "NC DEQ"), and delivered to the following address:

Inactive Hazardous Sites Branch
Division of Waste Management
N.C. Department of Environmental Quality
Division of Waste Management
1646 Mail Service Center
Raleigh, NC 27699-1646

Prior to payment, DEQ may designate a specific person to receive payment.

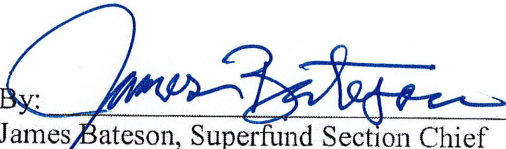
24. Petitioner AMEC agrees to file a *Notice of Voluntary Dismissal With Prejudice* of the contested case at the N.C. Office of Administrative Hearings within ten (10) days of the date this Settlement Agreement is fully executed by the Parties.
25. The Parties agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Neither DWM nor Petitioner AMEC shall apply for attorney fees or costs under any rule or law, and neither shall be liable for any attorney fees, costs, or expenses incurred by the other.
26. The Parties agree that the consideration for this settlement are the promises contained herein and that this Settlement Agreement contains the whole agreement between them relating to the subject matter hereof.
27. This Settlement Agreement shall be binding upon the Parties, their successors and assigns, and is entered into knowingly, intelligently, and voluntarily upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Settlement Agreement on behalf of the Parties hereto.
28. This Agreement may be executed and delivered in counterparts by electronic mail, each of which so executed and delivered counterpart is original, and such counterparts, together, shall constitute but the same instrument.

AMEC FOSTER WHEELER
ENVIRONMENTAL AND
INFRASTRUCTURE, INC. ALSO d/b/a
WOOD

By: 
Brad Knight
Senior Vice President, Legal E&I

Date: August 14, 2018

NC DEPARTMENT OF
ENVIRONMENTAL QUALITY,
DIVISION OF WASTE MANAGEMENT,
SUPERFUND SECTION

By: 
James Bateson, Superfund Section Chief
Division of Waste Management

Date: 08/14/2018